

Message Text

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PAGE 01 STATE 012330

12

ORIGIN ARA-10

INFO OCT-01 ISO-00 L-02 AGR-05 EB-07 COME-00 TRSE-00 AID-05

RSC-01 /031 R

DRAFTED BY ARA/BC/B:MWCOTTER:EO

APPROVED BY ARA/BC:JEKARKASHIAN

L/M:JBOYD (PHONE)

L/ARA:DGANTZ(PHONE)

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R 180003Z JAN 75

FM SECSTATE WASHDC

TO AMEMBASSY LA PAZ

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E.O. 11652: N/A

TAGS: BDIS, ETRD, BL

SUBJECT: WHEAT FLOUR DISPUTE

REF: LA PAZ 0351

1. REPRESENTATIVES OF L/M AND ARA/BC MET WITH CHARGE LORIA AND ATTORNEY WILLIAM JOYCE JANUARY 16. MEETING ARRANGED AT BEHEST OF L/M WHICH AS ROUTINE MATTER WISHES TO DISCUSS IMPLICATIONS OF SOVEREIGN IMMUNITY CLAIM AND PROCEDURES TO RAISE IT. L/M NOTES THIS IS DIFFICULT AND LITTLE UNDERSTOOD AREA OF THE LAW, EVEN BY MOST LAWYERS, AND MEETS WITH CLAIMANTS TO INSURE NO QUESTIONS LEFT UNANSWERED.

2. LORIA WAS TOLD THAT DEPARTMENT WOULD RESPOND SOONEST TO JANUARY 10 NOTE OUTLINING FURTHER REQUIREMENTS. EMBASSY MUST SUBMIT BY ANOTHER NOTE LEGAL MEMORANDUM ARGUING FOR THE CLAIM OF SOVEREIGN IMMUNITY, COPIES OF LEGAL DOCUMENTS SERVED ON EMBASSY, AND ANY OTHER DOCUMENTS EMBASSY WISHES TO SUBMIT FOR DEPARTMENT'S CONSIDERATION. THAT INFORMATION IS THEN TRANSMITTED TO OTHER PARTIES BEFORE THE COURT WHICH MAY SUBMIT SIMILAR BRIEFS TO THE DEPARTMENT. ULTIMATE
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PAGE 02 STATE 012330

DECISION TO RECOMMEND THAT COURT ACCEPT SOVEREIGN IMMUNITY

CLAIM IS MADE BY LEGAL ADVISOR ACTING ON ADVICE OF THREE-MAN PANEL FROM L; AND AFTER APPROPRIATE REFERENCE TO OTHER OFFICES IN DEPARTMENT.

3. L/M REPRESENTATIVE EXPLAINED THAT USG ADOPTED RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY IN 1952. ACCORDING TO THAT THEORY ONLY "PUBLIC" ACTS OF A GOVERNMENT ARE ENTITLED TO IMMUNITY. PRIVATE ACTS ARE NOT, AND THE DEPARTMENT LOOKS TO THE NATURE NOT THE PURPOSE OF THE ACT TO DETERMINE IF IT IS PRIVATE OR PUBLIC. FYI. ALTHOUGH DEPARTMENT CANNOT MAKE A DETERMINATION IN THIS CASE UNTIL ALL RELEVANT DOCUMENTS ARE AVAILABLE, THE DEPARTMENT IS NOT OPTIMISTIC REGARDING A SUGGESTION OF IMMUNITY IN THIS CASE ON THE BASIS OF PRIOR LIKE CASES. HOWEVER DEPARTMENT CAUTIONS THAT NO DOCUMENTS OR ARGUMENTS WITH REGARD TO THIS CASE HAVE YET BEEN RECEIVED AND DEPARTMENT IS IN NO POSITION TO EVALUATE MERITS OF THIS CASE AT THIS TIME. END FYI.

4. PRELIMINARY HEARINGS ON THE CASE MAY BE HELD IN MOBILE AS EARLY AS FEBRUARY 10 BY THE CHIEF JUDGE OF THE FEDERAL JUDICIAL DISTRICT. BOLIVIAN EMBASSY HAS LEGAL REPRESENTATIVE IN MOBILE AS WELL AS HERE WORKING ON THE CASE. WITH PROCEEDINGS AT THIS STAGE, IT WOULD BE INAPPROPRIATE FOR EXECUTIVE AGENCIES OF THE USG TO TAKE ANY ACTION.

5. DEPARTMENT WILL POUCH RELEVANT DOCUMENTS AND KEEP EMBASSY INFORMED OF DEVELOPMENTS IN THIS CASE. KISSINGER

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